

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Shannon R. Nelson Living Trust

CASE 76D-0512-R-2023
76D 30127085

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Statement of the case

Stock claim 76D 30127085 received issue remarks.

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Montana law requires the Water Court to resolve issue remarks.

Issue

Are the issue remarks resolved?

Finding of fact

The Preliminary Decree abstract for stock claim 76D 30127085 identifies the historically accurate elements.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

Analysis

Issue remark resolution

Stock claim 76D 30127085 appeared in the Preliminary Decree with the following notice issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. No objections were filed against the claim.

Stock claim 76D 30127085 appeared in the Preliminary Decree with the following issue remark concerning source:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

It appears DNRC added the multiple sources issue remark after modifying the unnamed tributary source name on the claim during claims examination. However, the DNRC claim examination notes contain no record of the modified source name or explanation concerning the addition of the multiple sources issue remark.

Statement of claim 76D 30127085 identifies its source as Ksanka Creek. Attached to the statement of claim is a hand drawn map and two statements. The hand drawn map identifies Ksanka Creek and an unnamed tributary of Ksanka Creek as the sources involved on this claim. It is evident from the map that this water right diverts water from two sources as a single appropriation for stock watering. The two statements from individuals having personal historical knowledge of the claim confirm the historical accuracy of the statement of claim and its attachments.

Conclusions of law

The notice issue remark concerning lack of the claim's inclusion in the previous 76D decree served its notice purpose.

The lack of information resulting in the multiple sources issue remark does not outweigh the prima facie proof afforded statement of claim 76D 30127085, or information in the claim file. Claimant correctly filed one statement of claim for this appropriation. The issue remark concerning multiple sources and the possibility of two water rights is resolved.

Recommendations

Stock claim 76D 30127085 accurately reflects historical use. No changes to the elements of the claim should be made.

The issue remarks should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm removal of the issue remarks in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Shannon R. Nelson Living Trust
3042 N 175 W
Ogden, UT 84414-1522

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 30127085 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NELSON, SHANNON R LIVING TRUST
3042 N 175 W
OGDEN, UT 84414 1522

Priority Date: DECEMBER 31, 1901

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: KSANKA CREEK

Source Type: SURFACE WATER

Source Name: CANYON CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2SWNW	6	36N	26W	LINCOLN

Source Name: CANYON CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		E2SENE	1	36N	27W	LINCOLN
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Source Name: KSANKA CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2SWNW	6	36N	26W	LINCOLN
2			E2SENE	1	36N	27W	LINCOLN